

§ 159-153. Approval of other financing arrangements.

(a) Commission Approval Required. – Except as provided in subsection (b) of this section, approval by the Commission in accordance with this section is required before a unit of local government, or any public body, agency, or similar entity created by any action of a unit of local government, may do any of the following:

- (1) Incur indebtedness.
- (2) Enter into any similar type of financing arrangement.
- (3) Approve or otherwise participate in the incurrence of indebtedness or the entering into of a similar type of financing arrangement by another party on its behalf.

(a1) Nonprofit Water Corporation. – A loan from the Water Infrastructure Fund to a nonprofit water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section.

(a2) Investor-Owned Drinking Water Corporation. – A loan from the DWSRF, an account within the Water Infrastructure Fund, to an investor-owned drinking water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section.

(b) Exceptions. – Approval by the Commission in accordance with this section is not required in any of the following cases:

- (1) Another law of this State already specifically requires Commission approval of the indebtedness or financing arrangement and the required approval is obtained in accordance with that law.
- (2) The indebtedness or financing arrangement is a contract entered into by a unit of local government pursuant to G.S. 160A-20 and is not subject to review by the Commission pursuant to G.S. 160A-20(e).
- (3) The indebtedness or financing arrangement is excepted from the review requirements of this Article because it does not meet the conditions of G.S. 159-148(a)(1) or (3) or because it is excluded pursuant to G.S. 159-148(b).

(c) Effect of Special Act. – No special, local, or private act shall be construed to create an exception from the review of the Commission required by this section unless the act explicitly excludes the review and approval of the Commission.

(d) Factors Considered. – The Commission may consider all of the following factors in determining whether to approve the incurrence of, entering into, approval of, or participation in any indebtedness or financing arrangement subject to approval pursuant to this section:

- (1) Whether the undertaking is necessary or expedient.
- (2) The nature and amount of the outstanding debt of the entity proposing to incur the indebtedness or enter the financing arrangement.
- (3) Whether the entity proposing to operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement. In making this determination, the Commission may consider the operating entity's experience and financial position, the nature of the undertaking being financed, and any additional security such as insurance, guaranties, or property to be pledged to secure the indebtedness or financing arrangement.
- (4) Whether the proposed date and manner of sale of obligations will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or by any agency of either of them.
- (5) The local government unit's debt management procedures and policies.

- (6) The local government unit's compliance with the Local Government Budget and Fiscal Control Act.
- (7) Whether the local government unit is in default in any of its debt service obligations.

(e) Documentation. – To facilitate the review of the proposed indebtedness or financing arrangement by the Commission, the Secretary may require the unit or other entity to obtain and submit any financial data and information about the proposed indebtedness or financing arrangement and security for it, including any proposed prospectus or offering circular, the proposed financing arrangement and security document, and annual and other financial reports and statements of the obligated entity. Applications and other documents required by the Commission must be in the form prescribed by the Commission.

(f) Conditions for Approval. – If the Commission determines that all of the following conditions are met, the Commission shall approve the incurrence of the indebtedness, entering of the financing arrangement, or approval or other participation in the indebtedness or financing arrangement, by the unit of local government or the other entity referred to in subsection (a) of this section:

- (1) The amount of the indebtedness to be incurred or financed is not excessive for the purpose contemplated.
- (2) The entity that will operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement.
- (3) The proposed date and manner of sale of obligations will not have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them. (1998-222, s. 2; 1999-213, s. 11; 2005-454, s. 10; 2011-145, s. 13.11A(e).)